

ESTTA Tracking number: **ESTTA250001**Filing date: **11/19/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Dynasty West LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	56285 Stellar Drive Bend, OR 97707 UNITED STATES		

Attorney information	Christopher J. Day Law Office of Christopher Day 301 East Bethany Home Road, Suite A-213 Phoenix, AZ 85012 UNITED STATES chris@daylawfirm.com Phone:602-258-4440
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Registration Subject to Cancellation

Registration No	3375584	Registration date	01/29/2008
Registrant	Melzer, William C. 210 Desert Holly Drive Palm Desert, CA 92211 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2006/01/01 First Use In Commerce: 2007/05/13

All goods and services in the class are cancelled, namely: Jeans; A-shirts; Balloon pants; Belts; Bermuda shorts; Blouses; Board shorts; Boots; Boxer shorts; Breeches; Camp shirts; Capri pants; Cargo pants; Clothing, namely, hand-warmers; Denim jackets; Denims; Down jackets; Dress shirts; Fabric belts; Fleece pullovers; Fleece shorts; Fur coats and jackets; Fur jackets; Golf shirts; Horse-riding boots; Infants' shoes and boots; Jackets; Jogging pants; Leather belts; Leather jackets; Leather pants; Leg warmers; Leg-warmers; Leggings; Light-reflecting jackets; Lounge pants; Night shirts; Open-necked shirts; Panties, shorts and briefs; Pants; Polo shirts; Ponchos; Pullovers; Rainproof jackets; Riding boots; Shirts; Short trousers; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Shorts; Slacks; Sleep shirts; Sleeved or sleeveless jackets; Sport shirts; Sports jerseys and breeches for sports; Sports shirts; Sports shirts with short sleeves; Stuff jackets; Suede jackets; Sweat pants; Sweat shirts; Sweat shorts; Sweaters; T-shirts; Turtleneck sweaters; Underwear, namely, boy shorts; V-neck sweaters; Waist belts; Wind resistant jackets; Wind shirts; Wind-jackets

Grounds for Cancellation*Torres v. Cantine Torresella S.r.l.Fraud*

808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Attachments	33375584 Cancellation.pdf (4 pages)(132551 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher J. Day/
Name	Christopher J. Day
Date	11/19/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re:

Registrant's Mark: PONY PALS
Registration No: 3375584
Date of Registration: January 29, 2008

Dynasty West LLC,

Petitioner,

v.

William C. Melzer,

Registrant.

Cancellation No. _____

Petitioner, Dynasty West LLC, a Delaware limited liability company with a business address of 56285 Stellar Drive, Bend, OR 97707, believes that it is or will be damaged by Registration No. 3375584 and hereby petitions to cancel same.

As grounds of this Petition, it is alleged that:

1. Petitioner has a bona fide intention to use the mark POTTY PONY PALS (and design) on or in connection with non-disposable cloth training pants.
2. On or about June 9, 2008, Petitioner filed application serial number 77494334 to register the mark POTTY PONY PALS (and design) for non-disposable cloth training pants.

3. On or about September 19, 2008, a USPTO examining attorney informed Petitioner that registration of Petitioner's mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3375584.
4. Petitioner's Petitioner's legitimate and lawful registration and use of its POTTY PONY PALS (and design) mark will be jeopardized by continued registration of the mark in Registration No. 3375584.
5. Registrant's application for registration was filed on an use basis on May 25, 2007. The goods listed in the application included: "jeans; a-shirts; balloon pants; belts; bermuda shorts; blouses; board shorts; boots; boxer shorts; breeches; camp shirts; capri pants; cargo pants; clothing, namely, hand-warmers; denim jackets; denims; down jackets; dress shirts; fabric belts; fleece pullovers; fleece shorts; fur coats and jackets; fur jackets; golf shirts; horse-riding boots; infants' shoes and boots; jackets; jogging pants; leather belts; leather jackets; leather pants; leg warmers; leg-warmers; leggings; light-reflecting jackets; lounge pants; night shirts; open-necked shirts; panties, shorts and briefs; pants; polo shirts; ponchos; pullovers; rainproof jackets; riding boots; shirts; short trousers; short-sleeved or long-sleeved t-shirts; short-sleeved shirts; shorts; slacks; sleep shirts; sleeved or sleeveless jackets; sport shirts; sports jerseys and breeches for sports; sports shirts; sports shirts with short sleeves; stuff jackets; suede jackets; sweat pants; sweat shirts; sweat shorts; sweaters; t-shirts; turtleneck sweaters; underwear, namely, boy shorts; v-neck sweaters; waist belts; wind resistant jackets; wind shirts; wind-jackets."
6. In the application, Melzer declared under oath, being warned that willful false statements may jeopardize the validity of the application, that he was then using the mark in commerce on or in connection with the identified goods.

7. Registrant's mark registered on the Principal Register on January 29, 2008 for "jeans; a-shirts; balloon pants; belts; bermuda shorts; blouses; board shorts; boots; boxer shorts; breeches; camp shirts; capri pants; cargo pants; clothing, namely, hand-warmers; denim jackets; denims; down jackets; dress shirts; fabric belts; fleece pullovers; fleece shorts; fur coats and jackets; fur jackets; golf shirts; horse-riding boots; infants' shoes and boots; jackets; jogging pants; leather belts; leather jackets; leather pants; leg warmers; leg-warmers; leggings; light-reflecting jackets; lounge pants; night shirts; open-necked shirts; panties, shorts and briefs; pants; polo shirts; ponchos; pullovers; rainproof jackets; riding boots; shirts; short trousers; short-sleeved or long-sleeved t-shirts; short-sleeved shirts; shorts; slacks; sleep shirts; sleeved or sleeveless jackets; sport shirts; sports jerseys and breeches for sports; sports shirts; sports shirts with short sleeves; stuff jackets; suede jackets; sweat pants; sweat shirts; sweat shorts; sweaters; t-shirts; turtleneck sweaters; underwear, namely, boy shorts; v-neck sweaters; waist belts; wind resistant jackets; wind shirts; wind-jackets" in International Class 025.
8. Upon information and belief, Melzer was not using the mark PONY PALS on or in connection with all of the identified goods on the date the application was filed.
9. Upon information and belief, the statements in the Affidavit were made in bad faith and in an attempt to perpetuate a fraud upon the PTO because Melzer knew or should have known that he was not using the mark PONY PALS in connection with all of the goods listed in the application.
10. Reasonably relying on the truth of such materially false statements, the PTO approved the application for registration. As a result, the application was issued a registration on January 29, 2008.

11. Upon information and belief, the conduct of Melzer constitutes fraud on the PTO.

WHEREFORE, Petitioner prays that Registration No. 3375584 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Dated this 19th day of November, 2008.

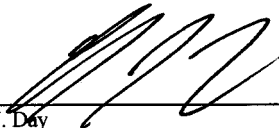
/Christopher J Day/

Christopher J. Day, Attorney for Petitioner
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CERTIFICATE OF SERVICE

I hereby certify that this document is being deposited on November 19, 2008, in the U.S. mail, first class postage pre-paid, addressed to Registrant at the following address:

William C. Melzer
210 Desert Holly Drive
Palm Desert, CA 92211



Christopher J. Day